IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7458 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ISAMILBHAI AMIBHAI GANCHI

Appearance:

MR NAGESH C SOOD for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/07/2004

ORAL JUDGEMENT

1. The petitioner - Gujarat State Road Transport Corporation has challenged the judgement and award dated 8th August 1997 passed by the Labour Court, Vadodara in Reference (LCV) No.1850/98, whereby the Labour Court directed the Corporation to reinstate the respondent workman on his original post and to pay him 75% of the

backwages.

2. The respondent workman was working with the petitioner Corporation as a Driver. He remained unauthorisedly absent from duty without submitting any leave report or taking prior permission from the authorities. According to the petitioner, in spite of several notices the, respondent workman did not report for duty. Therefore, after holding a departmental inquiry against the respondent-workman, wherein also he remained absent, an order of dismissal was passed against the respondent workman.

3. The respondent workman therefore raised a dispute and the Assistant Labour Commissioner, Vadodara, on 14th December 1998, referred the dispute to the Labour Court which was numbered as Reference (LCV) No.1850/98. The Labour Court, after hearing the parties, allowed the said Reference by judgment and award dated 8.8.1997, quashed and set aside the order of dismissal of the respondent workman and directed the petitioner Corporation to reinstate the respondent-workman on his original post and to pay 75% backwages. It is this judgement and award which is the subject matter of the present petition.

4. Heard Mr. Nagesh Sood for the petitioner and Mr. R.D. Rawal for the respondent workman.

5. It is stated that the respondent workman has already reached the age of superannuation in the year 2002 and therefore there is no question of reinstatement with the petitioner Corporation. Therefore the question now to be decided is in a narrow compass as regards the penalty and , if any, and backwages.

6. Mr. Nagesh Sood for the petitioner submitted that the respondent workman remained absent from duty unauthorisedly and without any permission for such leave. He further submitted that in spite of various notice issued to him the respondent workman did not remain present for duty and it is only after the inquiry the respondent workman was dismissed from service. Mr. Sood further submitted that the backwages awarded by the Labour Court at 75% is on higher side inasmuch as the respondent workman was absent from duty and no penalty has been imposed by the Labour Court and therefore the judgement and award of the Labour Court is required to be quashed.

7. Learned counsel for the respondent workman submitted that the respondent workman was suffering from

Tuberculosis and it is because of this illness he could not attend the duties. He contended that the departmental inquiry has proceeded exparte. Mr. Rawal has has relied upon a decision of this Court in the case of Vadodara Municipal Corporation Kamdar Karmachari Union Vs. Municipal Corporation of Vadodara, reported in 1993(1) GLH 640. In the decision in similar set of circumstances, this Court observed that in view of the fact that the petitioner has failed to apply for leave and to get the application duly sanctioned before remaining absent from duty, penalty of removal cannot be said to be commensurate to the misconduct nor can it be said to be proportionate to the misconduct. This Court, therefore, quashed and set aside the order of dismissal and held that it would be open to the respondent Corporation to impose any minor penalty. Mr. Rawal has also relied upon a decision of this Court dated 10.1.2000 passed in Special Civil Application No.7116 of 1999. In that case this Court observed as under:

> "4. There is no factual dispute as regards the contents of this affidavit. It would, therefore,appear that although the employee had medical leave to his credit, his only misdemeanor and a technical one at that, is that he did not get is leave sanctioned before proceeding on medical leave. The award, therefore, directing his reinstatement with only 70% backwages is, therefore, justified. ..."

8. Keeping the aforesaid ratio in mind, Mr. Rawal has fairly conceded that this Court may decide appropriate backwages and may impose some minor penalty. Mr. Nagesh Sood for the petitioner has also fairly stated that in view of the aforesaid facts and circumstances, this Court may pass appropriate orders.

9. There is no dispute that the respondent workman was suffering from Tuberculosis, and therefore he could not remain present for duties.It is also a fact that he remained absent from duty unauthorisedly. Therefore, looking to the overall facts and circumstances of the case and also the decisions cited above, it would just and proper to direct to pay 50% of the backwages instead of 75% as directed by the Labour Court and to impose penalty of stoppage of two increments with future effect.

10. In the result, the petition is partly allowed. The judgement and award of the Labour Court is modified to the extent that the respondent workman will be paid 50% back wages and there shall be a penalty of stoppage

of two increments with future effect. The petitioner shall pay the arrears flowing from the aforesaid order to the respondent workman within a period of three months from today. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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